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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF OREGON**
8 **MEDFORD DIVISION**

9 **PAMELA GALE SHELDON,**
10 Individually and as Personal Representative
11 of the Estate of **BILL JACK SHELDON,**

12 Plaintiff,

13 v.

14 **CLEAVER-BROOKS, INC., et al.**

15 Defendants.

Case No. 1:19-CV-01443-MC

**PLAINTIFF’S MOTION FOR
LEAVE TO AMEND COMPLAINT**

16 **I. RELIEF REQUESTED AND ARGUMENT**

17 Plaintiff respectfully requests that this Court enter an order granting Plaintiff leave to
18 amend her complaint and the pleading caption to update her prayer for relief and add two newly-
19 discovered defendants. Plaintiff’s proposed amended complaint is attached as Exhibit 1 to the
20 declaration of Benjamin H. Adams. Under both Oregon’s Civil Rules and the Federal Rules of
21 Civil Procedure, leave to amend shall be “freely given when justice so equires.” ORCP 23(A);
22 FRCP 15(a)(2); *Runnion ex rel. runnion v. Girl Scouts of Greater Chicago & Northwest Indiana*
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(7th Cir. 2015) 786 F3d 510, 519-520. The sole defendant, Cleaver Brooks, does not oppose Plaintiff's motion.

A. The Court Should Grant Plaintiff Leave to Amend Her Prayer for Relief.

The Court should grant Plaintiff leave to amend her prayer for relief to more accurately reflect the evidence Plaintiff anticipates submitting at trial. ORCP 18 provides that, when a pleading contains a demand for the recovery of money damages, "the amount thereof shall be stated." The purpose of the prayer is to advise defendants of the precise nature of the demand, in order that the party may be prepared to meet it. *Kerschner v. Smith*, 121 Or 469, 473, 256 P 195 (1927). Amendments under Rule 15 may increase the damages sought or change the remedy sought. FRCP 54(c); *Ash v. Wallenmeyer* (7th Cir. 1989) 879 F2d 272. Here, Plaintiff seeks leave to amend the prayer for relief from \$10 million to \$50 million to better account for newly-discovered evidence, including evidence of conduct justifying punitive damages.

B. The Court Should Grant Plaintiff Leave to Amend the Complaint To Add Two New Parties.

Plaintiff seeks to amend the complaint to add two newly-discovered defendants. To add a new party to the action, the pleadings normally must be amended in accordance with Rule 15 procedures. See FRCP 21 – "On motion or on its own, the court may at any time, on just terms, add or drop a party"; *Nelso v. Adams USA, Inc.* (2000) 529 US 460, 466-467. Here, through the deposition of non-party Kogap and other investigation, Plaintiff has discovered the names of two new defendants responsible for Mr. Sheldon's mesothelioma. Accordingly, Plaintiff seeks leave to add these two newly-discovered defendants.

1 **II. CONCLUSION**

2 For the above reasons, Plaintiff respectfully requests that the Court grant her motion.

3 **DATED:** March 3, 2020.

4 **DEAN OMAR BRANHAM SHIRLEY, LLP**

5 /s/ Benjamin H. Adams

6 Benjamin H. Adams, CSB No. 272909

(Admitted *Pro Hac Vice*)

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16 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on March 3 2020, the attached Plaintiff's Motion for Leave to Amend Complaint was electronically filed and served on all counsel of record.

Allen Eraut Kevin Bergstrom RIZZO MATTINGLY & BOSWORTH, PC 1300 SW Sixth Avenue, Suite 330 Portland, OR 97201 COUNSEL FOR CLEAVER-BROOKS, INC.	Jeffrey S. Mutnick LAW OFFICE OF JEFFREY S. MUTNICK 737 SW Vista Avenue Portland, OR 97205 CO-COUNSEL FOR PLAINTIFF
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DEAN OMAR BRANHAM & SHIRLEY

/s/ Monica Furino

MONICA FURINO